G. R. S. 58]
*Previous references.*

File No. 50-11

1911 : 12
( Legislation)

Serial Nos. 1 — 15

*Later references.*
Legis 9-15-3

P. 82

# GENERAL AND REVENUE SECRETARIAT.

---

*Serial Nos.* 1 — 15

**Part B for** September 1913

---

SUBJECT.

Claims of Mrs A. Gifford for the sponge gold & quartz and sand produced in the Court of the Dt Magte. Kolar in connection with the Cr Case Nos 460, 793 & 801.

---

1. From the Dt Magte. Kolar. 7633/359 of 22/5/1912.
Intimates that the Cr miscellaneous case No. 16 of 11-12 on the file of the Asstt Comm & 1st Cl. Magte Kolar has been posted to the 10th proximo for hearing

2. From the Govt Adv. C 948 of 7/6/12.
Forwards copy of the Dt Magte letter No. 7633/359 of 22/5/12 & intimates to appear before the Dt Mgte

P.T.O

GPB—5,000—22-10-10

18.8.14

G.R.S. 11]

1911-12

GENERAL AND REVENUE SECRETARIAT.

(Legal)

NOTES.

File No. 30-11

FILE HEADING.

Claim of Mr A. Gifford and 5 others of the Kolar Gold Fields for the Slonge gold, quartz and sand produced in the court of the Asst comm and 1st class Magistrate, Kolar in connection with the 2 cases Nos 460, 793 & 809 of 1910-11, in the file of that court

From court The Dt Magistrate / Kolar Dt

No. 7633-357 Dated 22/5/12 Received 23/5/12

Diary No. 3133 | Enclos. — | Spare Copies. — | Serial No. 1

BRIEF ABSTRACT OF LETTER.

He informs that the 2 his case of 16 of 1912 on the file of the court of the Asst comm and 1st class Magistrate, Kolar Gold Fields in which Mr A. Gifford and 5 others claim the relief to them of the Slonge gold quartz and sand produced in that court was in connection with criminal cases Nos 460, 793 and 809 of 1910-11 on the file of that court has been posted for hearing on the 10th proximo.

NOTES AND ORDERS.

Submitted for orders. The file regarding a similar claim by the Kolar Gold Fields Mining Board which was contested by govt which was eventually decided in favour of the Board by the Chief court is now ~~with the~~

NOTES—First Sheet.

GPB—30,000—27-6-11

G. R. S. 12]

General and Revenue Secretariat.

Legs File No. 50 of 1911

| Serial No. | |
|---|---|
| 5 | We have a different (& more intelligent) Magte. Perhaps the defence may be tried again & we may try to obtain a full Bench ruling<br>6/6/12 |
| 6 | The case comes on for hearing before him for the 3rd time on his 10th of his claim put forward by the Mining Board is to be contested. His Govt advocate may be asked to appear on his above date on behalf of Govt<br>7/6/12<br>Dewan |
| 1669<br>7-6-12 | |
| 7 | The case shd be defended Govt Advocate shd be asked to appear Govt. - If possible the Collector may be consulted with him. - (Please write to Magte 8/6/12 (illegible) |
| 8 | Copy of telegram issued is also put up - 7/June/12 |

NOTE—Contn. sheet.

GPB—20,000—20-1-12

G. R. S. 12]

General and Revenue Secretariat.

Legis File No. 50 of 1911

| Serial No. | |
|---|---|
| | Letter from Govt Advocate to Dt Magt of Kolar to be written to accompany as per Govt Agt [illegible] T/6/12 |
| Issued 7/6/12 | |
| 2 | Letter no C 98 dt 7th June 1912. To the Govt Advocate. Forwards copy of the Dt Magts letter no 7633/359 dt 22.5.12 and instructs him to appear before the Special Magistrate with the Public Prosecutor if possible to contest the claim on behalf of Govt. |
| 3 | Memo no C 99 dt 7th June 1912. To the Dt Magt Kolar. Forwards copy of the above. Read 7/6/12 |

NOTE—Contn. sheet.

GPB—20,000—20-1-12

5

G. R. S. 12]

General and Revenue Secretariat.

Legis File No. 50 of 1911-12

Serial No. 3

No. 243 dated 11/6/12
from the Govt Advocate
Gives a short summary of
the 3 cases in which properties
now claimed by the Mining Board
were produced and states that
the claim as regards properties
other than sponge gold is with-
drawn and the case as far as it
relates to sponge gold is posted for
further evidence to the 15th inst.
Submitted

(S.S) SW(11)
12/6/12 10

Subd for perusal

11 Observed The reasoning
on which the recent Ch. Ct.
judgment is based does not
seem to apply to "Native Gold" and
this at least should be ordered to
be delivered over to Govt

12/6/12

1805
15-6-12

13/6/12

Seen

Counsel for Govt

NOTE—Contra. sheet.

23
12/6

SS
14/6/12

SS 12/6

WPT—20,000—20-1-12

G. R. S. 12]

General and Revenue Secretariat.

Legis File No. 50 of 1911-12

Serial No. 5

No 7 dated 5/7/12
From the Govt Advocate
Forwards a copy of the order
of the Vth class Magistrate, Kolar
Gold Fields in the gold claim
case.
Submitted
~~6/7/12~~ 6/7/12 SN(11)
6/7/12

17 Subd for perusal

18 The question is whether the
Case need be taken before the
Ch. Ct. Reference is ~~invited~~ invited
to the last para of the Govt
Advocate's memo

SA
6/7/12

Let 19 I think the Govt Advocate may
be asked to file an appeal in the
Chief Court against the order of the
Mag and to move the Court to have
the ~~proceedings of lower court brought before~~ Hon'ble
appeal referred to a Full Bench

NOTE—Contn. sheet.

GPB—20,000—20-1-12

G. R. S. 12]

General and Revenue Secretariat. | Leg. File No. 50 of 1911-2

Serial No.

In view of the important issues and questions of law involved in the Pt Cannalle v Devraj

23
8/7

8/7/12

116 This was of the result expected in the Mayte Court We may try the Chief Court again. But the matter will not go before a Full Bench unless referred by two Judges.

2225
10-7-12

9/7/12

23
8/7

9/7/12

I think the case should be taken up in appeal before the Chief Court as at present constituted. [illegible]

D Bhaya

NOTE—Contn. sheet.

G.P.B.—20,000—20-1-12

9

G. R. S. 12]

General and Revenue Secretariat.

Legis File No. 50 of 1911-12

Serial No.

It may be an instruction to the Govt Advocate to ask that the case may be taken up by the Full Bench & that the decision of the Full Bench may be the basis for determining the further course thereof 19/July-

22

The Govt Advocate has recorded a very able minute -

23 I fail to see why a tenant should be accorded to appeal which is not accorded to petty bearing quarter - Govt only claim as a prerogative the ~~[illegible]~~ Govt property is no main property, and it does not seem reasonable to deny such prerogative when a number of persons may be found who can combine for the purpose of saying that the property belongs to one or another among them - 19/July/12

24 Draft reply to the Govt Advocate at once & submit to Commissioner

22 8/7

NOTE—Contn. sheet.

GPB—20,000—20-1-12 445 [illegible] 24/7/12

G. R. S. 12]

General and Revenue Secretariat.

Legis File No. 50 of 1911-12

Serial No. 25

A draft G.O. to the and a draft D.O. to the Govt Advocate are put up. In the D.O. the observations contained in the notes are conveyed to the Govt Advocate to guide him in his action.

(SB)
20/7/12

Offrs may be appd

20/7/12

I do not think there will be any use in Govt adv asking for a full bench unless the Judges in the Divn Bench are divided in opinion. The Divn however may go

20/7/12

20/7/12

20/7/12

NOTE—Contn. sheet.

GPB—20,000—20-1-12

20/7/12

G. R. S. 12]

General and Revenue Secretariat. | Legs File No. 50 of 1911-12

| Serial No. | |
|---|---|
| 6 | No J 232-4 dated 22/7/12<br>To the Govt Advocate and Dt Magistrate Kolar and Registrar Chief Court.<br>Directs the Government Advocate to prefer an appeal to the chief court against the above order |
| 7 | D.O. No J 235 dated 22/7/12<br>To the Govt Advocate<br>Requests him to have the appeal decided, if possible, by a Full Bench in view of the important question of law involved in it |
| 8 | No ~~J 234~~ 39 dated 23/7/12<br>From the Govt Advocate<br>Forwards his bill for Rs 100/- being his fees for have appeared in and argued the case before the Senior Asst comnr and 1st class magistrate K.G.F. on the 10th and 15th July 12<br>Submitted<br>(sd) 28<br>6/8/12 It is stated by the Govt Advocate that the fee of Rs 100/- is claimed for (1) attending the Senior Assist Commissioner and 1st Class |

NOTE—Contn. sheet.

GPE—20,000—20-1-12

Serial No.

they are properly to be regarded as incidental proceedings in one and same case.

Hag'w Rule 7(3).

2) The maximum fee allowable in such cases for each days attendance is Rs 25/- for the Govt Advocate, unless a higher sum is sanctioned by Govt in Consideration of the exceptional importance and difficulty of the case. The Govt Advocate having conducted the Case on two days i.e. on the 10th and 15th inst, seems to be entitled to Rs 50/- But double this amount is claimed in the bill now received.

Bills for orders.

Hag'w 30 It is not known whether 12/8/12 Bar 11 has to be Consulted in case of fees fee is allowed.

Submitted

3) Mr S. Narayana Rao who was the Govt Advocate in March 1911 was paid rupees 100/-* as his fee for contesting previous conducting the claim of the mining board for some unwrought-gold before the Special Magistrate K.G.F. ~~which was finally heard before the~~

(58) (31)
14/8/12

Matter under Consideration in Connection with Payment of fees in the Sandal wood theft Case. File is before the 2nd Councillor (Legis 5-212-11)

*Legis 16-10-10. This file was put up with the courts file referred to above.

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

[R. S. 12]

General and Revenue Secretariat.

File No. 50 of 1916

Serial No.

(X) Flag W

At least one object of this rule is to enable the Govt to know what fee, in the case, it might be paid, in the opinion of the presiding Judge

3rd Perhaps we may request the Govt Advocate to obtain the "Signature of the Judge" to the "bill" as Contemplated in Rule 7 (b) of the rules fixing the ~~fees~~ remuneration of Public Prosecutors & the Govt Advocate ~~This will give us an indication of~~

14/8/16

3rd Sir I don't think his Judge or Mag has anything to do with deciding his proper amount of fee that may be paid to his Govt advocate. It is for his Govt who instructs his Govt advocate to appear in his case to determine his fee to be paid to him.

3rd In the present case his Govt advocate is entitled to a fee of any Rs 50/- according to rules; but he has claimed Rs 100/- Before claiming higher fees than these

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

G. R. S. 12 ]
General and Revenue Secretariat.

Leg File No. 52 of 1901-12

| Serial No. | |
|---|---|
| 9 | From the Govt Advocate<br>Requests him to state the circumstances under which he claims in this case a larger fee than is usually admissable to him<br>No 76 J 744 dated 9/9/12 |
| 10 | From the Govt Advocate<br>Informs that he has based his claim on the fact that he had 3 cases to contest on the 10th and only 2 cases on the 15th June 1912<br>Submitted<br>~~According to para 3 of~~<br>According to sub-para 3 of para 7 of G.O. No 1932-85 J 137 of 02-03 & 16/3/04 the fees have to be calculated at Rs 25/- per day for the 1st case and 2/3 of the above rate for each of the other cases conducted on the same day. Here if the ~~separate~~ claims in the ~~subject matter of the~~ several mis. applications be taken as separate cases then the fee admissible under the ordinary rules would amount to Rs 25 + $\frac{2 \times 25 \times 2}{3}$ for the 10th + Rs 25 + $\frac{25 \times 2}{3}$ = ~~Rs 25~~ for the 15th June 12 i.e. altogether Rs 25 + 33 1/3 + 25 + 16 2/3 = Rs 100/-, which is the amount claimed in the Bill.<br>(38)<br>16/9/12 |

Flag W

NOTE—Contn. sheet.

GPB—55,000—27.4.09

17/9/12

C R. S. 12]

General and Revenue Secretariat.

Lgo File No. 50 of 191

Serial No.

41 Though there were 3 diff. cases
in point as issue were precisely
the same in each case.

42 As for However Sheriff according
to him under the Pri. advocate is
entitled to a fee of Rs 100/- as
provided above in his letter
Draft may be put up sanctioning
this and submitted to Hon'ble Comm.

23/
27/9

23/9/12

43 - Draft 'sanctioning' put up

Ag. 23/9/12

26/9/12

907 44 Draft appd by Hon'ble Council 27.9.12

28/9

45 Issued

30/9/12

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

| Serial No. | |
|---|---|
| 11 | To the Comptroller and the Govt Advocate No J.1015-6 dt 2nd Oct 1912<br>Sanctions the bill for Rs. 100/- and forwards it to the Comptroller for audit. |
| 12. | From the Govt Advocate. No. 173 dt. 14th Jan 1913.<br>With reference to Jl. 6 (supra) reports that the case has been posted for hearing before a full bench and that the result will be intimated in due course.<br>(46) Submd for information<br>KGA. 19/1/13 SM 20/1 (47) The further report may be awaited<br>SION 20/1/13 |
| 13 | No. 40 dated 5th Aug: 1913<br>From the Govt. Advocate<br>Informs that the Judges of the civil Court in Full Bench have unanimously on point of law held that the decision in 15 M.I.C.R. 299 is correct and enquires if the appeal should be pressed on point of facts also.<br>Subv. (48) The Full Bench decision is adverse to |

Subv.
Books Kept with the file
M.C.C.R. Vol. XV
do Vol. XVIII Pt 14
L.R. A.O.S. II, 1896
I.L.R. XXVIII Mad.
The other books referred to in the judgment Full Bench order are not available.
(58) 7/8/13

Keep books till called for

(53) 7/8/13



GPB—85,000—17-6-12.

R. S. 12]

General and Revenue Secretariat. | Legis File No. 57 of 1911-12

| Serial No. | |
|---|---|
| | 52. Sent with a draft Reply to the Govt Advocate. Orders have not been passed on the linked file. (S-P) 14/8/13 15 |
| | 53. Do Sent) SPL 15/8 |
| | 54. Approved. The linked file may be sent separately for orders Desai 15/8 |
| | 55. Issue SPL 15/8 |
| 14 | No J617 dated 20/8/13 to the Govt Advocate in Mysore, Bangalore. Asking the Govt Advocate to use his discretion in the matter of passing the appeal on facts in the case of Govt Vs A. Gifford and five others. |

The linked file Legis 16-10 is separated according to serial No. 18-8 and sent to the Records 18-8

Gen 20/8

NOTE—Contn. sheet.

GPE—61,000—17-6-12.

[G. R. S. 12]

General and Revenue Secretariat.

Legis File No. 50 of 1911-12

| Serial No. | |
|---|---|
| 15 | No 85 dated 19th Sept: 1913 from the Govt Advocate<br>Forwards a copy of Judgment delivered in the Appeal cases Nos 8 and 9 of 1912-13 (Govt v Gifford and others) dismissing the appeals.<br>Submitted<br>SS The file on the subject with the file re a similar claim made by the Mining Board in ~~1909~~ 1910 are now with the 1st Cr to whom they were submitted on 27/8/13th on the question of taking suitable legislative action in the matter. May this be submitted ~~sent~~ to him in continuation.<br>24/12/13 WL. SL 1/Cr<br>SP 6/12<br>I Cr)<br>57 This may be put up with the Council file which must be with the Secy.<br>27/12/13<br>29/12 |

since learnt that the file is before the council.

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

G. R. S. 12]

General and Revenue Secretariat.

Legis File No. 50 of 1911-12

| Serial No. | |
|---|---|
| 58 | This was linked with the other file Legis 16-10 and considered in the council therewith. It was resolved that no further action is called for in this case and the papers may be filed. |

B

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

No. 7623/359

Office of the District Magistrate,
Kolar District

E 3133.

Dated Kolar, 22nd May 1912.

Legis 50-11 Genl 1.

From

P. F. Bowring, Esquire,
Offg District Magistrate,
Kolar District

To

K. R. Srinivasa Iyengar, Esquire, M.A.,
Offg Secretary to the Government of
His Highness the Maharaja of Mysore
Revenue and General Departments,
Bangalore.

Sir,

I have the honor to State that criminal miscellaneous case No 16 of 1911-12 on the file of the Assistant Commissioner and 1st class Magistrate, Kolar Gold Fields in which Mrs A. Gifford and 5 others have claimed Sponge gold, quartz and sand of the total value

III/235 Sd 4/V/12 19 Feb

From P. F. Bowring, Esquire,
Offg District Magistrate
Kolar District.

To K. R. Srinivasa Ayyangar, Esquire, M.A.,
Offg Secretary to the Government
of His Highness the
Maharaja of Mysore
Revenue and General
Departments
Bangalore

Dated
Despatched
Received
General No. 7633/359
No. Dated 22nd May 1912

Enclosure No.

---

Please attend as
case bearing this as
'urgent'

WB
20/5

Intimates that the criminal miscellaneous case No. 16 of 1911-12 on the file of the Assistant Commissioner and 1st class Magistrate, Kolar Gold Fields has been posted to the 10th instant for hearing.

of Rs 208/- produced in the Court in Connection with the Criminal cases nos 460, 793 and 809 of 1910-11, has been posted to the 10th instant for hearing.

This information is furnished in case Government should wish to contest the claim.

I have the honor to be.

Sir,
your most obedient Servant

P. T. Bourne

Offg. District Magistrate,
Kolar District.

No. L.98
Legs. 50-11

S.No. 2

General and Revenue Secretariat,

Camp Mysore, dated 7th June 1912.

From,

K.R.Srinivasaiengar, Esq., M.A.,

Offg. Secretary to the Government of His Highness the Maharaja of Mysore, General and Revenue Depts.

To,

C.S.Dorasawmi Iyer, Esq., B.A.B.L.,

Government Advocate, Bangalore.

Sir,

In confirming the marginally noted telegram sent by me to your address to-day I have the honor to forward herewith copy of letter No.7633/359 dated 22nd May 1912 from the District Magistrate of Kolar stating that Criminal Case No.16 of 1911-12 on the file of the Assistant Commissioner and 1st class Magistrate of Kolar Gold Fields in which Mr.A.Gifford and 5 others have claimed the sponge gold produced before the Court in certain criminal cases is posted to the 10th instant and to request that you will be so good as to appear before the Court to contest the claim on behalf of Government.

* Please appear with Public Prosecutor on behalf of Govt. in sponge gold claim case before 1st class Magistrate, Kolar Gold Fields. Case posted 10th instant. Official instructions follow.

I am also to state that you may if possible associate the Public Prosecutor with you in conducting the case.

I have the honor to be,
sir,
Your most obedient servant,

(Draft) [illegible]

Offg.Secretary to Govt.

4

General and Revenue Secretariat,

No. C.99. Legis.50-11

Dated Camp Mysore, 7th June 1912.

Copy forwarded to the District Magistrate of Kolar with letter reference to his No.7633/359 dated 22nd May 1912 and in continuation of the marginally noted*telegram despatched to his address to-day.

Your letter 22nd May about sponge gold cases posted 10th instant. Govt.Advocate instructed to appear with Public Prosecutor. Letter follows.

By Order,

(Sd) [illegible]

Offg.Secretary to Govt.

7/6/12

5

I Draft Telegram to the District Magistrate, Kolar from the Dewan.

---

Your letter 22nd ~~May~~ About Sponge Gold cases posted 10th instant. Government Advocate instructed to appear ~~associating the~~ with Public Prosecutor ~~also if possible~~. Letter follows X

---

II To the Government Advocate, Bangalore.

-o-o-o-

Please appear ~~associating the~~ Public Prosecutor ~~with you if possible~~ on behalf of Government in ~~the case of~~ sponge gold claim ~~case~~ before First Class Magistrate, Kolar Gold Fields. Case posted 10th instant. Official instructions follow. X

7. 6. 12

Legis 50-11
Serial 3
No. 243
III Mys Gaz. one.
1916 Jan.

6

Office of the Government Advocate in Mysore,

Bangalore dated, 11th June 1912.

V3 281

From,

C.S. Doraswamy Iyer Esq., B.A., B.L.,
Government Advocate in Mysore, Bangalore.

To,

K.R.Sreenivasa Iyengar Esq., M.A.,
Offg.Secretary to the Government of H. H.
the Maharaja of Mysore General and Revenue Depts

Sir,

Adverting to your letter.No.C 98/Legis 50-11 in the matter of the claim preferred by Mr. A.Gifford and 5 others to the sponge gold &c produced before the 1st class Magistrate Kolar Gold Fields in Criminal cases Nos.460,793 and 809 of - 1910-11, I have the honour to state that I appeared on the - 10th Instant before the said Magistrate and contested the - claim of the applicants to the gold in question.

A short summary of the above 3 cases is appended - hereto for information.

The Pleader for the Mining Board rests his case -- entirely on the recent order of the Chief Court in Bapu Sab's case, but as that order has reference only to sponge gold the claim relating to articles other than sponge gold was withdrawn. The Magistrate, as at present advised, is inclined - to act upon the records of the Criminal cases and unless it is found not possible to deal satisfactorily with the claims on the materials already upon record it does not appear ---- likely that the parties would be allowed to put in further - evidence. The claim so far as sponge gold is concerned is -

7

posted to the 15th Instant on which date after hearing further arguments, the Magistrate will decide whether he would proceed to judgment at once or allow the parties to adduce further evidence.

The Public Prosecutor, Bangalore Division, to whom a copy of your letter under reply was shown, expressed his inability to proceed with me to Kolar Gold Fields on the 10th Instant as he had to conduct a Sessions Case on the same date at Kolar. He will however be informed of the adjourned date of hearing and his assistance will be availed of on that date for conducting the claim cases.

I have the honour to be,

Sir,

Your most obedient servant,

Government Advocate.

Enclt Leg SD-11-3 8

SHORT OUTLINE OF THREE CASES IN WHICH THE MINING BOARD CLAIM THE PROPERTY.

1. C.C.No.460/10-11. Gold valued at Rs.180/- consisting of Sponge gold, Bar gold, and native Gold, accused Shaik Hyder. The accused was stopped by the Robertsonpet Police in a field near Oorgaum village. He was found in possession of the said gold weighing 9 10/16 tolas. A certificate was given by Mr Grey, Chief Reduction Officer of the Nundydrug Mine. This officer was not examined in the case but his certificate has been attached to the records of the case. Three witnesses were examined for the prosecution and six for the defence. The accused was sentenced to six months Rigorous Imprisonment under sections 6 and 13 of Mysore Mines Regulation. He appealed to the Chief Court and the sentence was upheld in Criminal appeal No.106 of 1910-11 by the Chief Court of Mysore.

-----00000 ✕ 00000-----

2. C.C.No.374/793 of 10-11. Sponge gold valued at Rs.10/- accused Ariokamari. This case was tried summarily. Accused pleaded not guilty but admitted that the property was given to her by another woman. Accused was bound over for one year in two surities of Rs.10/- each to appear and receive sentence when called upon under section 562 Cr.P.C. She was of tender years. Certificate given by the Chief Reduction Officer, Mysore Mine and attached to record.

-----000000 ✕ 00000-----

3. C.C.No.380/809 of 10-11. Quartz and Sand valued at Rs.18/- Accused Adikolam and Sebastian. On information received the Police went to the house of the accused and conducted a search finding the property and a little mercury. The 2nd accused was not present, and there being no evidence against him he was discharged. The 1st accused admitted possession and was sentenced to one month's R.I. The case was tried summarily.

11.6.13

No 266.

Legis 50 of 1911-12
Serial 54

J 3439

9

Office of the Government Advocate in Mysore,
Bangalore dated, 25th June 1912.

From,

C.S.Doraswamy Iyer Esq., B.A., B.L.,
Government Advocate in Mysore, Bangalore.

To,

The Offg:Secretary to the Government of H.H. the
Maharaja of Mysore,General and Revenue Departments.

Sir,

In continuation of my letter No.243 dated 11-6-1912 I have the honour to state that I proceeded to Champion Reef on the 15th Instant and argued in all respects, that the --- claim of Mr.A.Gifford & others to the sponge gold in question was unsustainable.

2. The Public Prosecutor of Bangalore Division was unable to go with me on the 15th Instant to the Kolar Gold -- Fields on account of illness.

3. After hearing arguments at some length the Magistrate reserved orders and adjourned the cases to the 24th Instant I have received telegraphic communication from the Superintendant of Police, Kolar Gold Fields, that orders were pronounced yesterday allowing the claim of the mining companies to the gold in question. The Superintendant of Police has been requested to obtain and forward for submission to ---- Government a certified copy of the order passed by the -- Magistrate.

I have the honour to be,
Sir,
Your most obedient servant,

C.S.Doraswamy Iyer

Government Advocate.

Encl to Leg 50-11-5



# N O T E.

The facts are correctly set out in the ---- Magistrate's order. About the number of Companies actually working now on the Mines evidence was taken on remand in Bapu Sab's case. From the - evidence recorded and from official publications it was proved in that case that the mines represented by the Petitioners were the only mines that are now working in the Kolar Gold Fields - mining area. I conceded this point in the present case, as I thought that by traversing it no useful purpose would be served. The Report of the Chief Inspector of Mines, which is a Government publication, shows that these are the only mines -now working.

2. The only argument by which the claim of the mining Sirdars to the sponge gold in question was sought to be supported was by a reference to the the decision of the Chief Court given in Bapu Sab's case. If the order of the Chief Court on which reliance is - placed is analysed it will be seen that the --- decision is based (a) on certain inferences --- drawn from the facts and (b) on the application analogically of a rule of procedure prescribed in the Civil Procedure Code to proceedings under section 517 Criminal Procedure Code.

3. The inferences of facts are:-

(a) that if sponge gold is found within a --- mining area there is a violent presumption - that it has been stolen from one of the mines.

(b)

Encl K Leg 50-12-5

12



(b) Where sponge gold is recovered from the - possession of any person within the Kolar Gold Field mining area and such a person is unable to account for his possession a strong presumption arises that the gold has been stolen from one of the working mines.( — )

When ?

4. Inasmuchas inferences on facts depend on the circumstances and facts proved in each case -and an inference drawn on the facts of one ---- particular case may not be of universal application, the Magistrate in the present case has I think rightly expressed himself not bound by the inferences drawn by the Chief Court in Bapu Sab's case. But it is a matter for consideration ---- whether the conclusion at which he arrives viz. that the sponge gold in question must have --- been extracted from the gold bearing quartz --- stolen from one or the other of the mining companies now working is correct. To my mind it seems to be only a possible theory, but not --- necessarily the most probable one. Because --- Sheik Hyder accused in Criminal case No.460 of 11-12 a resident of Kolar was caught with sponge gold near the Ooragaum Cooly Colony which is - between Robertsonpet and the Coromandel Railway station and quite close to one of the mines --- represented by the petitioners, it does not --- necessarily follow that the quartz out of which the sponge gold was got must have been stolen - from one of the mines of the Petitioners. It is quite probable that the gold in respect of which theft might have been committed many years ago when admittedly several other mines were working might have come into the possession of the ----

Encl to Leg SO-11-5 13



accused just before he was caught or he might - have had the gold for several years past and was caught in possession of it only now or it is equally possible, in the alternative, that the gold might have been produced from quartz taken from any of the mines which have been closed -- because it does not pay to work them. In Bapu Sab's case, in the light of the inferences ---- drawn by the Chief Court it was thought that these theories were quite improbable, but in the present cases, where the Magistrate is inclined to believe that the gold was not stolen as gold but was extracted from quartz stolen it may not perhaps, be thought, that the theories are so violently improbable.

5. The 2nd and the most important point ---- settled by the Chief Court to use the language of the Judges is:-

(a) If the Court is satisfied that the property belongs jointly to two claimants or severally to one of them and if the claimants are agreed that they may be made over to them, there is no ---- reason why the agreement should not be given -- effect to. If a Civil Suit were to be filed - by the Petitioners against Government no objection to the frame of the suit could be raised on the ground of misjoinder.

(b) The mere fact that the petitioners may not be in a position to prove that the gold was the produce of any particular mine will not be fatal to the claim; the question as to the particular mine from which the gold came is one of secondary importance.

Encl to Leg 50-11-5

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6. The above view of the law has been accepted by the Lower Court as binding on it as a Court subordinate tothe Chief Court whose rulings on question of law must be accepted as having binding effect on subordinate Courts. It may not therefore be out of place to examine the ruling of the Chief Court . There being no provision in the Criminal Procedure Code for claims being preferred in the alternative, Criminal caurts can only entertain such claims if the procedure prescribed for the Civil suits be held applicable. The procedure prescribed in the Civil -- Procedure Code for enabling any number of ----- persons to join together and claim jointly or severally, or in the alternative is that contained in Order 1 Rules 1 and 4 I do not think it will be considered absurd if it is contended, as was done in the Magistrate's Court that the provisions contained in Order 1,rules 1 to 4 are intended to apply to cases where the plaintiffs are not in a position to definitely predicate at the time the suit is filed whehter (a) all of them will be jointly entitled to the remedy --- asked for or (b) they will be severally entitled to or (c) in the alternative. Take for instance the case of the members of a Hindu family claiming to recover a property fromua third party. They will be jointly entitled to a decree if - they are members of an undivided family, on the footing that they are joint tenants; they will be severally entitled, if it turns out that the family is divided but that each member is entitl-ed to a definite share therein on the footing that they are co-tenants oreco-sharers; they will

Encl to Leg 50-11-5

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be entitled to a decree in the alternative (a) in favour of all if each is found to have a share therein or (b) in favour of such as may be found to be exclusively entitled thereto. But under any circumstance the Court must be in a position at the end of the trial to grant a decree to all of them jointly when they are found to be joint in interest or severally in case it is found that there has been a severance of --- interest or in the alternative in the lights of the facts established. The gist of the provisions relating to joinder of Plaintiffs seems to be that such a joinder is permissable only in cases where it is possible to give judgment "for such one or more of the Plaintiffs as may be - found to be entitled to relief, for such relief as he or they may be entitled to" (vide Rule 4 Order I)

7. In the case on hand if a Civil suit were to be filed against Government can the Court - pass judgment in favour of any one or more of the petitioners as the person or persons ----- entitled to the property in question. Perhaps not, because the petitioners admit that each of them caanot positively state that the property is his and if each individually cannot state that it is his property they cannot collectively state that the property does belong to any one of them. In my opinion cases in which it is - difficult if not impossible to say to which - particular individual a certain property belongs although it is certain that it does belong to one of the other of them are those in which more than one person owns property the charecteristics of which are so exactly similar that it is not possible

Encl to Leg 50-11-5



to state when such properties are mixed together which is whose. That is to say where it is --- certain that the property does belong to either of them but it is impossible to state definitely and accurately that it is the property of one and not of others. Cases of the above nature perhaps may by a stretch of language, be brought within the purview of Order 1 Rules 1 to 4 but not cases like the present where each is incapable of stating with any degree of certainty that it is either his or that of any others who have joined with him in claiming the property.

8. It may also be borne in mind that when a relief is claimed in the alternative by two --- persons the facts which constitute their right to it, as set forth by them must be not only - different but also conflicting and mutually --- exclusive. In other words they ask for a decree in favour of one of them if certain allegations are proved or in the alternative in favour of the other if certain other allegations are proved. Judged by this test on the allegation alleged or admitted by the Petitioners they cannot consistently ask for a relief in the alternative.

9. There is yet another point of view from which the matter may be looked at. The object of allowing joinder of Plaintiffs is among other things to avoid multiplicity of suits, - in fact under Order 1 rule 2 power is given to Court to order seperate trials when the joinder of Plaintiffs may embarass or delay the trial of suits. Let it be assumed for the sake of - argument that each of the petitioners files a

Encl to Leg 50-11-5



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seperate suit claiming the gold in question as his and in the course of the trial admits that he cannot prove that the gold is his, the Court will have no ~~objection~~ option but to dismiss each of these suits. Can these 5 persons who individually cannot maintain seperate actions improve --- their position by clubbing themselves together and filing one suit instead of 5. If it is held, that they can, then it means that the provisions contained in Order 1 rule 1 and 4 are intended to give relief to persons who cannot individually sustain their actions. an object which in my opinion the legislature may not have intended.

10. The next question to which I would invite the attention of Government is whether it is -- worth while taking up the matter again before the Chief Court. The answer to this will depend upon the view the judges may take as to the ---- binding nature of the ruling given in Bapu Sab's case. If a Divisional bench before whom the matter may come if an appeal is allowed ~~and~~ or a single Judge on the revision side (where a revision petition is filed) were to ---- consider that a decision of the Full Bench is desirable in view of the importance of the issues involved or of the conflict between the recent ruling in Bapu Sab's case and earlier decisions on the same point, an oppurtunity will perhaps be given to place the whole matter in all its aspects. But if, on the other hand, the Judges consider that they are concluded by the decision in Bapu Sab's case and that they are not prepared to reopen the case, the decision will go against Government.

5-7-12

Govt adv

Guilt Regn 50-11-5

15

IN THE COURT OF THE ASSISTANT COMMISSIONER AND
1ST CLASS MAGISTRATE, KOLAR GOLD FIELD.
Criminal Mis: Case No.16 of 1911-1912.

| (Petitioners). | (Opponents). |
|---|---|
| 1. Arthur Gifford.<br>2. H.J. Gifford.<br>3. R.H.P. Bullen.<br>4. C. H. Richards.<br>5. H.M.A. Cooke.<br>6. C. A. Prideaux.<br>(By Mr.M.G.Shamarao). | Government.<br>(By the Govt:Advocate). |

ORDER.

This is a miscellaneous case arising out of criminal --- cases Nos.460,793 and 809 of 1910-11 on the file of this Court and results to the disposal of the property produced in Court in connection with these cases:-

2. In C.C.No.460 the accused Shaik Hyder was caught on the 3rd February 1911 near the Oorgaum Cooly Colony in possession of a packet containing some sponge gold, some pieces of ---- native gold and a button (in two halves) of melted gold all together weighing 3.58 ozs and of the estimated value of ---- Rs.180/-. The accused was on the 16th March 1911 convicted of the offence of unlawful possession of Mining material ---- punishable under sections 6 and 13 of the Mysore Mines Regulation, and the Magistrate in his judgment ordered that "the - gold produced before the Court will be at the disposal of -- Government, if not claimed within six months".

3. In C.C.793, the accused Arokiamari of about 10 years was caught near Marikuppam on the 3rd May 1911, in possession of two small balls of sponge gold of the approximate value of -- Rs.10/- and was convicted on the 4th idem, in a summary trial of theft of the above gold, under section 379 I.P.C. as ---- regards the property the following was the order passed:-

"The gold to be at the disposal of Government if not claimed within three months".

Encl to Leg 50-11-5





4. In C.C.809 a quantity of gold bearing quartz and sand was found in the hut of Adikalam in Masikam Cooly Colony on the 6th May 1911. She was convicted on the 10th idem in a summary trial of an offence under section 411 I.P.C., and it was ---- ordered that the quartz and sand would be at the disposal of Government if not claimed in 6 months. The value of the quartz is estimated at Rs,13/- and of the sand at Rs.5/-.

5. In pursuance of these orders, notices were published in the Mysore Gazette dated 30th March 1911 and 25th May 1911 -- respectively to the effect that the properties would be at the disposal of Government if not claimed within the respective - periods mentioned above. On the 26th July 1911 the Secretary of the Kolar Gold Field Mining Board put in a claim " on behalf of the Kolar Gold Mining Companies" to all the properties --- mentioned in the notices. It may here be mentioned that the - notice dated 30th March 1911 in connection with C.C.460 refers to"sponge gold" valued at Rs.180/- This is not quite exact. The property consisted not only of sponge gold but also of -- some pieces of native gold and also a button of melted gold. The Mining Board Secretary's claim was posted for hearing to the 7th August 1911, on which date the three petitions, each of them signed by the six petitioners, who are the Superintend--ants of the Mysore, Champion Reefs, Oorgaum, Nundydrug and - Balghat Gold Mining Companies, and of the Tank Mine, were --- filed in connection with the three cases. This of course, was necessary because there was nothing to show that the Secretary of the Mining Board was authorized to make a claim on behalf of the Mining Companies. In these petitions the claim was made that the property was the produce "of one of the six working mines of the Kolar Gold Field and as such belongs to one of the Mines of the claimants", and the claimants prayed that -- "the said gold be handed over to Mr.G.E. Payne, Secretary to the Kolar Gold Field Mining Board" which " represents the -- common interest of all the claimants". The claims were -----

were ordered to stand over pending the decision of the Chief Court in regard to the sponge gold which was the subject --- matter of the offence in Criminal case No.676 of 1909-10 on - the file of this Court (Government VS Bapu Sab). The final order of the Chief Court in that case having recently been received, the present claims have been taken up for disposal. No other persons have preferred any claim to the property in-question.

6. Mr.Shamarao on behalf of the petitioners has withdrawn the claim to the pieces of native gold and the button of melted gold connected with case No.460 and to the gold bearing quartz and sand which formed the subject of case No.809 without prejudice as he says to the right of the petitioners to - bring forward a similar claim in cases of the same kind in furture. These will accordingly at the disposal of the Government under the orders passed by the Court at the original trials.

7. The claim of the petitioners has therefore to be considered only with reference to the sponge gold connected with cases Nos.460 and 793. No evidence was forthcoming at the original trial of case No.460 which would throw any light on the ----- question when the sponge gold connected with that case was -- obtained from, and the record of the summary trial in case -- No.793 does not show that any evidence on this point was adduced in that case either. Nor have the petitioners adduced any evidence on this or any other point in connection with the present application. In the absence of any evidence the Court would probably have had to hold that the claim of the petitioners was not proved. But the Government Advocate has very --- properly as I think admitted that there were no mines except those represented by the petitioners working on the Kolar --- Gold Field, at or about the time that the properties in ----- question were found with the accused. That this is so is a - matter that can easily be proved, as it was proved in Bapu Sab's case refered to in para 5 supra, by formal evidence including

[illegible]

[illegible]

[illegible]

official publications. That there were no other working Mines is not I think a fact which the Court may presume without -- evidence but as the opponents have admitted this, I believe that there can be no objection to the Court acting on the --- admission in the present case.

8. With this point granted, there seems to be no great difficulty in adjudicating on the present claim. The Government Advocate contended that there was no evidence before the Court to show that the property consists of sponge gold. But this seems to require no proof. It is obviously sponge gold. The final order of the Chief Court in Bapu Sab's case referred to above is taken as laying down the proposition that "where sponge gold is recovered from the possession of any person within the Kolar Gold Field Mining Area and such person is unable to account for his possession, a strong presumption arises that the gold has been stolen from one of the working mines" (vide head note to the report of the case at XVII Mysore C.C.R. 114). The order passed by Sir Stanley Ismay, C.J., contains the following passage: "When sponge gold is found within a - Mining Area there is a violent presumption that it has been stolen from one of the Mines". Now if this means that the - sponge gold must have been stolen as sponge gold from one of the Mines and this is what I understand from the whole --- tenor of the order passed both by the Chief Judge and Mr. -- Justice Krishna Rao, I would with the greatest respect, say that the presumption is entirely the other way. To one who is acquainted with the manner in which the Gold Mining Companies treat the quartz from the time it is brought to the Mill ---- until it becomes gold, and the great care and precautions --- against theft that the Companies take, it must be quite clear that it is practically impossible for any coolv to steal ---- either amalgam or sponge gold. Whenever sponge gold is found with unauthorised person the probability is that the quartz was pounded, made into amalgam by adding mercury and then ---

Encl to Leg. Sp 7/—5

9.



turned into sponge gold by driving off the mercury, all by the thieves themselves. So that the probability is that the sponge gold is not stolen from any of the Mines. But what is very probable is that the quartz was stolen from one or other of the Mines on the Filed. These need not be mines which do any milling or actually produce any sponge gold. The quartz may have been stolen from a place where only prospecting was going on, as for instance from the East Betrayaswamy Block, and sponge gold found with any person might well be the produce of quartz thus stolen. If sponge gold were found with a --- person in, say, Bethamangala or Bowringpet, the fact [redacted] by itself will not in my opinion justify the presumption that it must have been stolen from one of the Mines working and - producing gold. I say this with all deference to the Chief Court and because the question what inference may be drawn from a set of facts is itslef a question of fact in regard to which the inference drawn by the Chief Court in one need not, I --- believe, bind a subordinate Court in a subsequent case.

9. What I have stated above is not intended to mean that in all cases of unauthorised possession of sponge gold, the - Court has no means of drawing any inference as to where the quartz from which the gold was produced comes from. If a --- cooly coming up Edgar's Shaft, Mysore Mine, has sponge concealed about his person, it may be taken as practically ----- certain that he stole quartz from some place in the Mysore-- Mine and converted into sponge gold. If sponge gold is found with a cooly working in the Champion Reef Mine and living in, say Stephen's Camp, it would ordinarily be quite safe to presume that he stole the quartz from the Champion Reef Mine. Each case has to be decided according to its particular circumstances.

10. Now in Criminal case No.460 the accused Shaik Hyder a -- resident of Kolar was caught with sponge gold near the Orgaum Cooly Colony. He used to come here on shandy days ostensibly to sell cigarettes. The place he was caught is on the way

Encl K Leg 50 Hrs



from Robertsonpet to Coromandel Railway station. This place is quite close to some of the Mines represented by the ----- petitioners and there are as far as I have learnt no other - mines in that vicinity. I think that the most reasonable -- supposition is that the quartz out of which the sponge gold was obtained must have been stolen from one of the Mines of the petitioners.

11. Similarly in case No.793 the girl was caught with two pieces of sponge gold near Marikuppam (mysore Mine) and it - cannot reasonably be supposed that it was obtained from ---- quartz stolen from some distant mine. Any reasonable man --- knowing the locality must hold that the quartz was stolen from one of the Mines in the vicinity either the Mysore Mine or - the Champion Reef Mine or possibly even the OOrgaum Mine, although of course, it is impossible in this as in the previous case to say from which particular Mine it was stolen.

12. As I feel convinced in the present two cases that the -- sponge gold must have been obtained from quartz, stolen from one or other of the Mines represented by the petitioners, it only remains to notice the principal argument of the Government Advocate that claims in the alternative are not recognised by the Criminal Procedure Code, and that even if the Procedure prescribed for Civil Cases be held to be applicable, such -- claims can be entertained only where a suit in the alternative is maintainable under paras 1 and 4 of order I of the Code of Civil Procedure III of 1911. It is contended that such suits can be allowed only where judgment could be given "for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to" i.e., in cases where it is possible to give judgment in favour of one plaintiff or one or more specified persons among them and not in cases like the present one where the Court cannot say that any one of the plaintiffs is entitled to the relief

Encl to Leg 57 7-14

7.



sought. I do not think I need discuss this point at any length although I must say that I find it difficult to believe that the legislature has left without remedy, cases in which it is certain that one or other several persons is entitled to property found in the possession of another person, but the former cannot prove to which one of them it belongs and are willing to have it handed over to their common nominee. But this as I have remarked above is not a point on which there is room for much discussion as far as this Court is concerned. The first order of the Chief Court in the same Bapu Sab's case (XV Mysore C.C.R.299) has laid down the decision that where property coming before the Court under section 517 or 523 Criminal Procedure Code belongs to one or other of several persons and is not possible to prove to which particular person among them it belongs, there is nothing to prevent the Court from handing it over to their common nominee. This is a [redacted] decision on a point of law and is binding on this Court. I cannot therefore uphold the objection of the Government Advocate on this score.

13. In the ~~return~~ set I direct that the sponge gold connected with cases Nos:460 and 793 be handed over to the nominee of the petitioners viz., Mr.C.E.Payne, Secretary to the Kolar Gold Field Mining Board.

(Sd). K. Matthan.

24th June 1912.

Copy
Sd/- Govt Advr,

N.B The certified Copy is retained in my office
Sd/-

2 drafts

24

G.R.S. 28 ]

Legis File No. SD-11

Serial No. 6

247

*Diary No..of letter replied to* 962

*Proceedings of the Government of His Highness the Maharaja of Mysore.*

GENERAL AND REVENUE SECRETARIAT.

( )

, *the* 19

Date of issue

Signed by

READ— correspondence ending with letter No ) dated 5th July 1912 from the Govt Advocate in Mysore forwarding a copy of the order passed by the ~~ORDER THEREON.— No.~~ Senior Asst Commr and First-class Magistrate, Kolar Gold Fields regarding ~~in re~~ the claim of Mr A. Giffin and 5 others to certain ~~Sponge~~ gold in his case

*over.*

SUBJECT.

GPB—10,000 - 29-9-10

No 16 of 1911-12 on his file

Order thereon :- J 23204/Legis 5011
& 22.7.12

The Government are pleased to direct the Government Advocate to prefer an appeal to the chief Court against the order of the Senior Assistant Commr and First class Magistrate, Kolar Gold Fields in the case

Hy. Secretary to Govt
20 20/7/12

The Government Advocate in Mysore, Bangalore

" C/N Mayli Nalar

" Regr. chief Court

20/7/12

copies sent
22-7-12

4

G.R.S. 27]

GENERAL AND REVENUE SECRETARIAT.

(*Continuation Sheet draft form.*)

2815

Legis 50-1125 serial 7

D.O. J 2357 Legis 50-11 dt 22.7.11

Dear Sir,

With reference to Govt. order no: of today, directing you to file an appeal in the Klondyke Gold claim case, I am desired to request you ~~to kindly move the Chief Court~~ to have the appeal ~~preferred~~ possible decided by ~~be referred to~~ a Full Bench in view of the important ~~issue~~ and question of law involved in it, so that the decision may be the basis for determining the future course to be taken ~~up~~ by Govt. in similar cases.

Yours sincerely

Sd/-

C.S. Srinivasa Iyer Esq. B.A.B.L.,
Govt Advocate

The most important question seems to be whether the ruling that a number of persons who have no common interest can club together as is done in this case, to enforce a claim which each one can advance only exclusively for himself and adversely to others. This should be, I am desired to say, pressed forcibly before the Court.

Collectively

GPB—10,000—22-2-11

entered by Srinivasa Iyer 22.7.11

Legis 50 of 1911-12
Serial 8

26

No 39

Office of the Government Advocate in Mysore,

Bangalore dated, 23rd July 1912.

From,

C. S. Doraswamy Iyer Esq., B.A., B.L.,
Government Advocate in Mysore, Bangalore.

To,

The Secretary to the Government of H.H. the Maharaja
of Mysore General and Revenue Departments.

Sir,

Adverting to correspondence ending with this office No.7 dated 5th July 1912, submitting a copy of order passed by the Senior Assistant Commissioner and 1st class Magistrate, Kolar Gold Fields in Criminal Mis: Case No.16 of 1911-1912, on the file of his Court (Messrs: Gifford and five others VS Government of Mysore), I have the honour to submit herewith a bill for Rs.100/- duly countersigned, being my fees for attending the Senior Assistant Commissioner and 1st class ---- Magistrate's Court, Kolar Gold Fields, and contesting three claim petitions (Criminal Mis: Case No.16 of 1911-12) ------ arising out of Criminal cases Nos:460, 374/793 and 380/809 of 1910-11 on the 10th and 15th June 1912.

2. I request that sanction of Government may kindly be obtained for the encashment of the bill.

I have the honour to be,
Sir,
Your most obedient servant,

C Doraswamy Iyer

Government Advocate.

27

G.R.S. 26]

Legs File No. 53-11

Serial No. 9

*Diary No. of letter replied to*

No. J725

General and Revenue Secretariat

( )

, *the* 19 .

To

The Government

Advocate, Bangalore

Date of issue 3.9.12

Signed by Mr S. Srinivasaiya

Sir

With reference to ~~his~~ your

letter No 39 dated 23rd July

1912 forwarding for sanction

~~his~~ a bill for Rs 100/- for

fees for appearing before

the Asst commr and

1st class Magistrate Kolar

Gold Fields on the 10th and

15th June 1912 to contest

~~in connection~~

~~with~~ the claim of Mr.

~~Thomas~~ Gifford and 5 others

*over.*

SUBJECT.

28

for certain sponge gold &c.
I am directed to request
you to inform ~~explain~~ be good enough to state
the circumstances under
which you claim as fee
a larger amount than
ordinarily
you are entitled to under
sub-para (3) of para 7 of
Govt order No 1932-8 S. J137
of 02-03 dated 16th March 1904

Yours &c.

SD

per Secretary to Govt

WS(III)
30/8/12

W

*List of enclosures,*

*Copied by.*

*Examined by*

YS
29

GPB—20,000—25-9-10

Legs

No 76

III
1099 Gen

DIARY No. 1714

29

10/2-10 /3

Legis
50-11

SERIAL No. 10

Office of the Government Advocate in Mysore,
Bangalore dated, 6th September 1912.

From,

C. S. Doraswamy Iyer Esq., B.A., B.L.,
Government Advocate in Mysore, Bangalore.

To.

K. R. Srinivasa Iyengar Esq., M.A.,
Offg. Secretary to the Government of H.H. the
Maharaja of Mysore General and Revenue Depts.

Sir,

With reference to your letter No.J 725/Legis 50-11 dated 3rd September 1912, I have the honour to state that there were 3 claim cases relating to the subject matter of the property produced in the 3 Criminal cases viz. Criminal cases Nos. 460 of 10-11, 374/793 of 10-11 and 380/809 of 10-11 and in connection with the said 3 cases I went to Kolar Gold Fields on two days namely, the 10th and the 15th. On the 10th of June 1912, the Mining --- Board withdrew their claim in Criminal case No.380/809 when it was pointed out that the judgment of the Chief Court referred only to the Sponge gold. So that there were 3 cases on the 10th and 2 cases on the 15th. On - this basis I calculated my fee at Rs.100/-. If however you think that the rules do not enable me to claim this amount, you may pass the bill for such amount as in your opinion I may be entitled to.

I have the honour to be,
Sir,
Your most obedient servant,

Doraswami Iyer
Government Advocate.

1/2

30

G.R.S. 28.]

File No. 50-11

Serial No. //

*Diary No. of letter replied to*

*Proceedings of the Government of His Highness the Maharaja of Mysore.*

GENERAL AND REVENUE SECRETARIAT

( )

*, the* 19

Date of issue 2-10-12

Signed by Sm S Narayanaraya

READ--

Letter No 39 D 23rd June 1912 from the Govt Advocate in Mysore forwarding for sanction a bill for Rs 1001 being the fee claimed by him for holding the Sessions Court of the Senior Asst Comr and 1st Class Magistrate K.G.F. for conducting three claim petitions (Crim Misc Case No 16 of 1911-12) on the 10th & 15th June 1912.

2. Correspondence ending with letter No 76 D 9th September 1912

*over*

SUBJECT.

3/

from the Govt Advocate [redacted] a

the circumstances [redacted] which the sum of

Rs 10.0/- is claimed in support explaining why

Order Petition J. 1015-16/Legis 50-11-11 Encl 1 & 2-10-12

The bill is examined

and forwarded to the Comptroller

for audit.

27/9/12

Secy to Govt

To: The Comptroller with the bill

The Govt Advocate.

Encl 7/10/12

No 173

DIARY No. 1856.
1912-1913
SECTION Legis
FILE No. 50-11
SERIAL No. 12

Office of the Government Advocate in Mysore,
Bangalore dated, 16th January 1913.

From,

C. S. Doraswamy Iyer Esq., B.A., B.L.,
Government Advocate in Mysore, Bangalore.

To

The Secretary to the Government of His Highness the Maharaja of Mysore, General & Revenue Departments.

Sir,

With reference to Government Order No.J 232-4/Legis. 50-11 dated 22nd July 1912 directing me, to prefer an appeal to the Chief Court against the order of the Senior Assistant Commissioner and 1st class Magistrate, Kolar Gold Fields, in Criminal Mis: Case No.16 of 1911-12 on the file of this Court (Gifford and 5 others VS Government of Mysore), I have the honour to report that the appeals (Criminal appeals 8 and 9 of 1912-13) filed accordingly have been referred to a Full Bench.

2. The result of the appeals will be intimated in due course.

I have the honour to be,
Sir,
Your most obedient servant,

C Doraswami Iyer

Government Advocate.

Encl to Leg SD 11-13 34

In the Chief Court of Mysore, at Bangalore.

Wednesday, the 15th day of January 1913.

Present.

Mr. Justice K.S.Chandrasekhara Iyer,

and

Mr. Justice E. H. Wallace,

Criminal appeals Nos. 8 & 9 of 1912 - 1913.

---

The Government of Mysore. ---------. Opponent. -- Appellant.

(By Mr.C.S.Doraswamy Iyer,
Government Advocate).

VS.

1. Arthur Gifford.
2. H. J. Gifford.
3. R.H.P. Bullen.
4. C. H. Richards.
5. H. M. A. Cooke.
6. C. A. Prideaux.

-------- Petitioners. --- Respondents.

(By Mr.C.Krishna Murthi).

Criminal appeals against the order of the Assistant Commissioner and 1st class Magistrate, Kolar Gold Fields, in -- Criminal Mis. Case No.16 of 1911-12 directing the delivery to the respondents of the sponge gold produced before the Court in Criminal cases Nos.460 and 793 of 1910-11, respectively.

These Criminal appeals coming on for hearing, on Thursday the 12th day of December 1912, the Court pronounced the following:-

O R D E R.

These are appeals by Government against the order of the 1st class Magistrate, Kolar Gold Fields, directing the delivery of sponge gold connected with certain criminal cases on his file to the nominee of the respondents, who claim to represent the Companies owning the gold mines now carrying on work in the Kolar Gold Fields.

Two questions arise out of these appeals : First, whether the sponge gold the subject of the order was obtained from -- quarts stolen from some one or other of the aforementioned -- mines; Secondly assuming that it was so obtained, whether, in the absence of proof as to the particular mine from which the quarts was removed, the respondents can sustain a joint - claim to have the sponge gold handed over to them or to their common nominee.

The first is a question of fact, and as such we reserve it for subsequent disposal on the evidence.

The second is a question of law, in respect of which the Courts in Mysore seem to have long tacitly accepted and acted upon a view which, for the first time was disapproved of in - the case reported in 15 Mys.C.C.R.299. This was a ruling of a Divisional Bench of this Court, as was also the connected - decision in 17 Mys.C.C.R.114. And we understand that there - are no direct authorities elsewhere on the important principle of law involved.

Under these circumstances we refer to a Full Bench for decision the second of the question referred to above.

(Sd). K.S.Chandrasekhara Iyer

Judge

(Sd). E. H . Wallace.

Judge

In the Chief Court of Mysore, Bangalore.

Tuesday, the 1st day of April 1913.

Present:

Mr. Justice P. S. Krishna Rao, RAO BAHADUR, Chief Judge,

and

Mr. Justice K. S. Chandrasekhara Aiyar.

and

Mr. Justice E. H. W a l l a c e.

These Criminal appeals coming on for opinion before - the FULL BENCH on Tuesday, the 1st day of April 1913, the Court pronounced on Thursday the 10th day of July 1913 the - following:-

D E C I S I O N.

Mr. Justice E. H. Wallace:- These two appeals are by the Government of Mysore under section 520, Criminal Procedure Code.

Code. The two accused in the original cases had been convicted by the 1st class Magistrate, Kolar Gold Fields, of theft of "sponge gold", and the Magistrate in his order for the disposal of the stolen property, ordered it to be delivered to a nominee of the respondents, who are the Superintendents of the six Gold mines carrying on work at the time of the offences. The contention of the respondents was that, while they cannot say or prove from which of the six working mines the sponge gold was stolen, it is practically certain that it was stolen from one of the six, and that they are entitled in such circumstances to put in a joint claim to the delivery of the gold to their nominee, and to obtain an order of delivery of the gold to their nominee.

2. The question of law which has been referred for the decision of the Full Bench is "assuming that the sponge gold was obtained from one or other of the six working mines, can the respondents, in the absence of proof as to the particular mine from which the gold quarts, which yielded the sponge gold, was obtained, sustain a joint claim to have the sponge gold handed over to them or to their common nominee".

3. It has to be clearly borne in mind throughout this discussion that it is taken for granted that it has been proved

the gold whether in quartz as in sponge was stolen from one or other of the six working mines, of which the present respondents are the managers.

4. Under Section 517, Criminal Procedure Code, the Court has discretion to make any order that it thinks fit for the disposal of stolen property. There is certainly nothing in the language of Section 517 which would render the order appealed against improper or illegal, while in my opinion it would be unjust and inequitable to hold that respondents are not entitled to make such a joint claim.. ex hypothesi . the gold belonged to one of the six mines, and I cannot see what claim in equity Government has to it, merely because the mines cannot prove to which one of them it belongs. To take an analogous case : - If three persons are robbed, each of some rupees, and the robber is caught shortly after with the rupees all mixed up together, could Government equitably claim the whole of these stolen rupees, because none of the three victims can swear to the identity of his own stolen rupees.

5. It is argued that, on the analogy of Section 524, only a "person" can put in such a claim, and that six individuals joining together do not constitute a 'person'. In the first place, we are not bound to apply the analogy. Section 517

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not repeat the language of Section 524, and Section 524 only - comes into operation when a direction has been made under Section 518, or property has been seized under Section 523. Further, even assuming that the analogy is apt applicable, the definition of a "person", in the General Clauses Regulation III of 99, is that the word shall include "any company or association or body of individuals, whether incorporated or not". It cannot be denied that respondents are a "body of individuals" and therefore a 'person' in the legal sense. It is contended that they cannot be a person' because their claims inter se to the gold are presumably antagonistic. Even so, their claims as a body of individuals are identical, and antagonistic only to Government.

6. It is further contended, and has been argued at length, by the Government Advocate, that such a joint claim in a criminal enquiry cannot be maintainable, where such joint claim would not be maintainable, because of misjoinder of plaintiffs, in a civil suit against Government for the gold. I am unable to see that this argument has any application, or why, in an enquiry under Chapter XLIII of the Criminal Procedure Code, an enquiry summary and self-contained, we should hold that the discretion of a Criminal Court is fettered and limited by the provisions of the - Civil Procedure Code regarding joinder of plaintiffs in a civil

suit. This enquiry and a civil suit are entirely distinct. This enquiry is directed only to the establishment of a claim, not of a civil right. and its result has no effect on the rights of the parties to establish their claims or counter claims in a civil court.

7. I am therefore of opinion that the respondents are entitled to sustain a joint claim. It seems clear to me that if we are satisfied that the gold belongs to one of 6 persons, though we cannot say that it belongs to any particular one of them, a 'claim' has been 'established' and the claim of Government is t therefore ousted. I am in complete agreement with the ~~the~~ - ruling in 15 Mys. C.C.R. 209, except that I would rather not - here express an opinion as to whether. if the respondents sued Government, objection could be validly raised on the ground of misjoinder. I answer in the affirmative the question referred to us.

(Sd). E.H. Wallace.

J U D G E.

H.G.

The CHIEF JUDGE :- The question referred for the decision of the Full Bench is "assuming that the sponge gold the subject of the mr order was obtained from quartz stolen from s some one or other of the six mines represented by the respondents, can the respondents, in the absence of proof as to the particular mine from which the gold quartz which yielded the sponge gold was obtained. sustain a joint claim to have the sponge gold handed to them or to their common nominee". This question has been answered by my learned colleague (Mr. Justice Wallace) in the affirmative, and I see no reason to differ from him. As the decision in 15 Nys. C.C.R. 299 to which I was a party party proceeds not only upon general principles of equity, but also upon the ground that a joint claim such as that put forward by the respondents would be sustainable under the code of Civil Procedure if they sought to establish it as thm against Government. I think I ought to say a few words to explain the view I take of Rule 1 of order 1 of that Code. This rule corresponds to Section 26 of the Old Civil Procedure Code of 1884 with some important additions and alterations. One very important alteration is that for the words "in respect of the same cause of action" which occurred in the Section, the words " in respect of or arising out of the

same act or transaction or series of acts or transactions" have been substituted. The result is that the rule as it now stands is substantially the same as Rule 1 of Order XVI of the rules of the Supreme Court in England, a rule which I may observe was enacted because the old rule which it superseded and which was substantially the same as that contained in Section 26 of our Civil Procedure Code of 1884, was considered by eminent English Judges to be too narrow in its operation. (Vide Smruthwaite Vs Hannay [(1894) A.C. 494] and Carter Vs Rigby and Co. [(1896) 2. .B. 113 ]. The only conditions then which are necessary to be fulfilled in order to make a case fall within this new rule are : - (1) that the right to relief alleged to exist in each plaintiff should be in respect of, or arise out of, the same act or transaction or series of acts or transactions; and (2) that if the plaintiffs brought separate actions, a common question of law or fact should arise. There is, in my opinion, a concurrence of both these conditions in the present case. As regards the first condition, since it has been assumed by the Division Bench that made this reference that the sponge gold which is the subject of the claim was obtained from quartz belonging to one of the six mines represented by the respondents, the words "in whom the

right

right to relief exists in the alternative" apply to the case, there being a doubt as to in which particular mine the right sought to be enforced is vested, although there is no doubt that that right is vested in one of those mines.

The rights sought to be enforced is also, according to the rule, in respect of the same act or transaction, that act or transaction being the theft of the quartz which yielded the gold from one of the six mines represented by the respondents.

It is unnecessary for me to discuss ~~explain~~ at length about the existence of the second condition required by the rule, namely, that there should be a question either of law or of fact common to The several causes of action of the plaintiffs. The point was not seriously disputed by the learned Government Advocate, and it is clear upon the facts of the case as stated that the common question is whether the quartz which yielded the gold was stolen from a mine belonging to [one] of the six respondents, or whether it was obtained by the accused persons from a place or mine not belonging to any of them.

The rule under consideration, therefore, applies in my opinion, to the present case. Nor is the application of the rule precluded by reason of the fact that the res

respondents have different rights inter se. The observations made by Lord Hatherley in the analogous case of Warrick V (Queen's College, Oxford (L.R. 6 Ch. App. 716 at p. 726), may be usefully quoted in this connection. His Lordship there said : - "I "take it that the view of this court is that all persons having "a common right, which is invaded by a common enemy, although "they have diffks different rights inter se are entitled to join in attacking that common enemy in respect of that common right. "I may take an instance from modern times. There may be classes "of shareholders in a railway company who have different rights "inter se but they may all have a common enemy in the shape of "a fraudulent dirscot director, and they may all join, of course, "in one common suit against that director, although the after "the common right is established they may have a considerable litigation among themselves as to who are the persons entitled "to the gains obtained through that suit."

The decision of the Madras High Court in ~~Ex~~ I.L.R. 23 Mad. 503 (Lakshmakka V Nagi Reddi) also proceeds upon the same principle. In that case, a suit was brought by four members of a Hindu family against the widow of a fifth to re-cover the property of the deceased by right of survivorship. The plaint contained the further allegation that one of the

plaintiffs was the adopted son of the deceased. The defendant pleaded division and also denied the adoption. The Court held, on finding the adoption proved, that it was competent to it to pass a decree in favour of the adopted son alone without trying the question of division between the plaintiffs and the husband of the defendant. The court at the same time expressed its opinion that where the finding on one of the issues negatives any right in the defendant to hold the properties in suit on the case set up by him, it is not open to him to insist on the trial of the other issues, which can only affect the rights of the plaintiffs inter se and probably other rights of the defendants and plaintiffs not in issue in the suit

The decision of the Bengal High Court in the case of Jugobundhoo Dutt V Keneyk (1864, W.R. 61) also lends support to this view, although that was a case in which the right to relief existed in the plaintiffs severally. In that case, two persons living in the same house who had been plundered of their several properties at the same time, sued jointly to recover the value of the properties plundered. The defendants took the objection of misjoinder, but it was overruled by the court. In delivering the judgment of the Court, Loch, J, said " We "see no sufficient reason why the action should not proceed in

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"its present form, nor do we think that the illustration adduced at all meets the case. There can be no difficulty in deciding upon the claims of the respective plaintiffs. "The cause of action is common to both, viz, the attack on - "their residence; the time when the injury complained of was committed is one and the same, and the parties who committed the "injury are also the same in both cases. No court is ousted of "its jurisdiction by the form of this action, and the irregularity, if any there be, does not injure the defendants, but is in "their favour, inasmuch as they have to defend one instead of "two actions; and justice can be done in the form in which the "suit has been brought. The cause, the time, the place and the parties charged being the same in both instances, the fact that "plaintiffs have not a joint interest in the whole of the property plundered by the defendants is, in our opinion, insufficient "to put them out of court."

The case would, of course, have been different if the several causes of action of the respondents had arisen not out of the same act or transaction, but out of different acts or transactions, as was the case in Stroud v Lawson [A.1898] 2. Q.B. 44].

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I agree with Mr. Justice Wallace in thinking that the word "person" in section 524 of the Criminal Procedure Code of ~~Code~~ was intended to be used in its extended sense and that it would include an association or body of persons who could, under the provisions of the general law, join in filing one action or claim in respect of their several causes of action.

For the reasons above given, I am of opinion that the decision in 15 Mys. C.C.R. 299 is a correct decision and that the answer to the question referred to the Full Bench should be in the affirmative.

(Sd). P.S. Krishna Rao

CHIEF JUDGE.

Mr. Justice K.S. CHANDRASEKHARA AIYAR : - I have nothing to add to the observations of my learned colleagues. I fully agree with them as regards the answer to be given to the question of law referred to the Full Bench.

"Copy"

(Sd) K.S. Chandrasekhara Ayyr

JUDGE.

Government Advocate.

2

Asking the Govt. Advocate to use his discretion in the matter of preferring the appeal on the facts also in the case of Govt. vs Mr. A. Gifford and five others

46

G. R. S. 26]

of K. S. F. Act

Legis

File 50-11

Serial No. 14

*Diary No. of letter replied to* 1455

No. J.617

General and Revenue Secretariat

( )

*, the* *191*

To

The Govt. Advocate in Mysore, Bangalore

Date of issue 20-8-13

Signed by Mr S P Rajagopala Char

Sir,

With reference to your letter No 46 dated 5th Aug. 1913 forwarding for information the order of the Full Bench of the chief Court on the point of law involved in criminal appeal cases Nos 8 and 9 of 1912-13 on the file of that court

*over.*

SUBJECT.

1913

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(Govt. vs Mr A. Gifford and five others of the K. G. F.) and requesting instructions as to whether the appeal may be pressed on the facts also, I am directed to inform you that you may use your discretion in the matter.

I am to add that ~~it would perhaps be better if the case be argued fully from all possible aspects.~~ there is no reason why you should not urge before the Court all that can fairly be said with regard to the questions of fact involved in the cases

I have &c.

GPH

For secretary to Govt.

Dec 15/8

NM

*List of enclosures,*

Draft

GPH (38)

14/8/13

*Copied by*

*Examined by* NM

GPB—25,000—8-8-11.

DIARY No. J 1026

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No 85
Encl. one

1913-1914
SECTION Legis
50-11
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Office of the Government Advocate in Mysore,

Bangalore dated, ~~19th~~ September 1913.

From,

C. S. Doraswamy Iyer Esq., B.A., B.L.,
Government Advocate in Mysore, Bangalore.

To,

The Secretary to the Government of His Highness the Maharaja of Mysore, General and Revenue Depts.

Sir,

Adverting to correspondence ending with your letter No.J 617/Legis 50-11-14 dated 28th August 1913, I have the honour to report that the Honourable Judges of the Chief. -- Court, have passed orders dismissing the appeals in question (Nos.8 and 9 of 1912-13 Government VS Gifford & others).

2. A copy of the judgment delivered in the appeals - is herewith submitted.

I have the honour to be,

Sir,

Your most obedient servant,

C Doraswamy Iyer

Government Advocate.

Cwelta Leg 50-11-15 57

Tuesday, the 16th dat of September 1913.

P R E S E N T

Mr. Justice K.S.Chandrasekhara Aiyar

and

Mr. Justice E.H. Wallace.

These criminal appeals coming on for hearing on Thursday, the 11th day of September 1913, the Court pronounce the folowing :-

O R D E R

These are two appeals by Government under section 520 Criminal Procedure Code arising out of two criminal cases 460 of 1910-11 and 793 of 1910-11 on the file of the 1st class Magistrate, Kolar Gold Fields. In these cases two persons had ben convicted of the theft of " sponge gold " In his order in Criminal Mis Case No. 16 of 1911-12 the Magistrate under section 517 Criminal Procedure Code ordered that the "sponge gold" be delivered over to the joint nominee of the superintendents of the Gold mines then working on the Gold Fields, on the ground that it was extremely probable that the sponge gold had been stolen from and was the property of one of these working mines.

2. Government has appealed against this order, which applied

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applied to both cases, in the present two appeal cases. The two cases involved the same points and were heard together. Two main points were raised; (1) that the joint claim of respondents - superintendents of the working mines is not maintainable in law (2) that, if such a claim is maintainable, respondents have failed to prove that the gold in question is the property of one of the working mines.

3. The decision of the first point was referred to a Full Bench of this Court and in the Full Bench order, dated 1-4-1913, this Court has held that such a joint claim under section 517 Criminal Procedure Code is maintainable. This point is therefore concluded.

4. The second point remains for consideration. The lower Court's order proceeds on the basis, that, in view of the stringent precautions taken by the working mines to prevent theft of gold while in the condition of "sponge gold", it is very improbable that the "sponge gold" was in that condition when stolen, that it is much more likely that the thieves stole the gold bearing quartz, and themselves crushed it separated the gold by amalgamating it with mercury, and then produced the sponge gold by squeezing off the mercury, and

that

that as the sponge gold itself was found on the acused when they were in the vicinity of working mines, it is probable that the gold bearing quartz from which the sponge gold was extracted, was stolen from one of these mines.

5. The lower Court's argument does not carry conviction to our minds. Sponge gold is such an easily portable article that it does not follow that sponge gold found near a particular working mine must have been extracted from quartz stolen in the vicinity. Further we believe it to be the case that not more than two ounces of gold on the average is present in one ton of quartz, so that we have to suppose that, (as nearly as we can estimate, the actual weight of sponge gold in such case, not being furnished on the records) in one case about one ton of quartz, and in the other about ½ ton of quartz, had been stolen. This, of course, is not impossible, but a theft on such a scale is not so easy that we should feel bound to accept that solution of the case rather than suppose that the thieves had evaded the stringent precautions of the mines, and stolen the sponge gold in its condition of sponge gold.

6. In any case whether the gold was stolen while in the quartz or as sponge gold, the question for decision is whe-

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whether the respondents put forward such a case as justified the lower court in ordering the gold to be handed over to them. The Government advocate on behalf of Government urges that respondents must prove that the gold came from one of the working mines and suggests that it may have come from one of the mines not now working, or from some unknown and secret -ly worked source, or even from outside the area of the Gold Fields and Mysore State. Respondents urge that as their mines are the only ones now working, and as the gold was discovered in the vicinity of their mines, all the probabilities point to the fact that the gold was stolen from one of their mines.

7. Section 517 Criminal Procedure Code gives a wide discretion to a Court to make any order "it thinks fit for the disposal of any property" concerned in an offence. An order under this section is not categorically contingent on any one establishing his claim to such property, as is an order under section 524. It is evident that in the original Court any thing like strict proof of ownership is not prescribed under section 517, and that the Court has only to consider whether any claimant has established a fair probability that the property in question is his. The Court of appeal is likewise free to "make any further orders that may

be

be just". (Section 520 Criminal Procedure Code).

6. Now it seems to us that in the circumstances of this case there is a strong probability that the sponge gold was stolen from one of the working mines. No other mines in the vicinity are known to be working. It is improbable that any one quarrying quartz and extracting gold outside the working areas would be doing so in the vicinity of the working areas and would bring his gold in the form of sponge gold inside the working areas, where he would run imminent risk of being charged with theft of gold from the working mines. It is still more improbable that any one possessing sponge gold obtained from outside the Gold Fields or Mysore State would similarly bring it into the working area. The sponge gold now in question was found in each case in the near vicinity of a working mine, and within the gold working area, and in neither case did the accused establish that it had been honestly acquired.

9. We are therefore of opinion that in these cases there is strong presumption that the stolen sponge gold came from one of the working mines on the Field. In this view we are following the view arrived at in a similar case reported in 17 Mys.

C.C.R. 114. The probabilities are strongly in favour of the

respondents' claim and nothing more than this is in our opinion required to satisfy the provisions of section 517 Criminal Procedure Code. We therefore see no ~~[illegible]~~ sufficient reason to interfere with the order now under appeal and dismiss these appeals under section 520 Criminal Procedure Code.

" C O P Y ".

Government Advocate.

(Sd). H. S. Chandrasekhara Ayya

J U D G E.

(Sd). E. H. Wallace.

J u d g e.